

Applicants: Manfred KELLER, *et al.*  
Serial No.: 10/628,965  
Filed: July 28, 2003  
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Docket No.: 28069-606 CON  
(Formerly: BHE 3.0-109 (CONT))

### **REMARKS/ARGUMENTS**

In this Amendment, claims 22-43 and 45-61 are pending as previously presented. Claim 44 has been amended. Claims 1-21 are canceled without prejudice or disclaimer. It is submitted that no new matter is introduced into the application by virtue of the claim amendment. Accordingly, claims 22-61 are currently pending in this application.

#### **Double Patenting**

Claims 22-61 were rejected under the judicially created doctrine of obviousness type double patenting as allegedly being unpatentable over claims 1-15 of U.S. Patent No. 6,645,466 in view of Bauer (WO 99/15182).

Claims 44-57 were rejected under the judicially created doctrine of obviousness type double patenting as allegedly being unpatentable over claims 1-15 of U.S. Patent No. 6,645,466 in view of Keller et al. (U.S. Patent No. 6,182,655).

To expedite the prosecution of the instant application without acquiescing to the propriety of the present double patenting rejections, Applicants submit herewith a terminal disclaimer in view of U.S. Patent No. 6,645,466 and the required fee. It is submitted that the rejection is mooted. Accordingly, withdrawal of the above rejections of claims 22-61 and 44-57 under the judicially created doctrine of obviousness type double patenting is respectfully requested.

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### CONCLUSION

Applicants respectfully submit that this application is now in condition for allowance.  
An action progressing this application to issue is courteously urged.

Should any additional fees be deemed to be properly assessable in this application for the timely consideration of this Amendment and terminal disclaimer, or during the pendency of this application, the Commissioner is hereby authorized to charge any such additional fee(s), or to credit any overpayment, to Deposit Account No. **50-0311**, Reference No. **28069-606 CON**, Customer No. **34537**.

Should any extension of time be required for the timely consideration of this Amendment and response, the Commissioner is hereby authorized to grant any such extension of time as may be necessary, and to charge any additional fee(s) owed by Applicants for such extension of time, to the above-mentioned Deposit Account, Reference and Customer Numbers.

If the Examiner believes that further discussion of the application would be helpful, the Examiner is respectfully requested to telephone the undersigned at (212) 692-6742 and is assured of full cooperation in an effort to advance the prosecution of the instant application and claims to allowance.

Respectfully submitted,

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AND POPEO, P.C.

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